

STATEMENT OF FACTS

Your affiant, Jennifer Whittaker, is employed as a Special Agent by the Federal Bureau of Investigation (“FBI”). Specifically, I am assigned to the Washington Field Office tasked with investigating criminal activity in and around the Capitol grounds. As a Special Agent, I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of a violation of Federal criminal laws. The U.S. Capitol is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification are allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, which is located at First Street, S.E., in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in separate chambers of the United States Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. The joint session began at approximately 1:00 p.m. Shortly thereafter, by approximately 1:30 p.m., the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

As the proceedings continued in both the House and the Senate, and with Vice President Mike Pence present and presiding over the Senate, a large crowd gathered outside the U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

At such time, the certification proceedings still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts.

Shortly thereafter, at approximately 2:20 p.m. members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress was effectively suspended until shortly after 8:00 p.m. Vice President Pence remained in the U.S. Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be there.

On Thursday, January 7, 2021, an unknown male caller called the FBI's National Threat Operations Center (NTOC) and stated that Bobby Bauer, who was later identified as ROBERT L. BAUER, and his wife, Jenny Bauer, who was later identified as Jenna Bauer, attended the rally in Washington, D.C., on January 6, 2021. The caller knew that BAUER had posted photographs of the event on BAUER'S Facebook account entitled, "BobtheBauer." According to the caller, one of the photographs depicted BAUER inside the U.S. Capitol building giving the middle finger to the camera.

On January 8, 2021, FBI agents, William Kurtz and Sean Laferte, interviewed BAUER in-person at his place of employment. BAUER explained that he and his wife traveled from Kentucky to Washington, D.C. to attend the pro-Trump Rally on January 6, 2021. He stated that they stayed with BAUER'S cousin, EDWARD HEMENWAY in Winchester, Virginia from January 1 to January 5, 2021. According to BAUER, on January 5, he and his wife stayed at a hotel in D.C. to be closer to the rally.

The next day, BAUER, HEMENWAY, and Bauer's wife attended the pro-Trump Rally. According to BAUER, after President Trump told the crowd, "We are going down Pennsylvania Avenue to the Capitol," the crowd began moving towards the Capitol. BAUER, his wife, and HEMENWAY marched to the U.S. Capitol with the crowd. BAUER reiterated that he marched to the U.S. Capitol because President Trump said to do so.

BAUER stated that when he got to the U.S. Capitol he entered the building along with a crowd of other individuals, while his wife remained outside. He said that he saw six to eight S.W.A.T. officers standing outside the building and individuals in the crowd were throwing things at the officers. BAUER claims that he yelled at those individuals and said, "What the hell are you doing? They have stood down." BAUER, however, continued walking along the outside of the building until he saw a single door with a black ramp to his right. He used this door to enter the U.S. Capitol building, which he believed was on the ground-level. He stated that he did not think he had done anything wrong and according to him, there were no signs posted stating that he could not enter the U.S. Capitol building.

It became apparent to the agents who interviewed BAUER that HEMENWAY also entered the U.S. Capitol building with BAUER, but BAUER was reluctant to say so. On January 8, 2021, HEMENWAY called the agents and admitted that he was with BAUER inside the U.S. Capitol on January 6, 2021. The agents followed-up with BAUER on January 11, 2021, by telephone. During the telephone call, HEMENWAY explained that he and BAUER attended the pro-Trump rally together on January 6, 2021. He said that they stayed at a hotel in D.C. on January 5, 2021, because he "didn't know what was going to happen [on January 6, 2021]," but he had heard "crazy things" on social media.

According to HEMENWAY, during the rally President Trump said "something about taking Pennsylvania Avenue," so HEMENWAY and BAUER walked down Pennsylvania Avenue to the U.S. Capitol. As they entered, HEMENWAY heard a loud bang and saw a green plastic sign that said, "Do Not Enter." BAUER'S wife wanted to return to the hotel, so HEMENWAY gave her his cellphone so she could use the map functions because she did not have a working cellphone.

As BAUER and HEMENWAY, walked toward the U.S. Capitol, HEMENWAY saw officers in S.W.A.T. style gear standing near the scaffolding outside the Capitol building. He said that he and BAUER linked-up with a group walking towards a door to into the U.S. Capitol building and the group flow drew them through the doors into the building. HEMENWAY felt like he could not have peeled away from the group, but neither her nor BAUER tried to turn back.

Both BAUER and HEMENWAY recalled staying on the same level of the U.S. Capitol, while inside the building. Both men remembered encountering a police officer after they entered. According to BAUER, the police officer grabbed his hand, shook it, and said, "It's your house now." BAUER believed that the policeman was acting out of fear. HEMENWAY similarly recalled the officer shaking HEMENWAY'S hand and HEMENWAY said, "Sorry," to which the officer replied, "It's your house now, man," and gave HEMENWAY a half-hug.

HEMENWAY said that he and BAUER then entered a circular room with pillars. He thought people were fighting with police in this space but HEMENWAY was not close enough to see anything. BAUER stated that he was chanting, "stop the steal" while inside and took pictures and videos.

BAUER showed Special Agent Kurtz pictures on his phone that he took while inside the Capitol, including photographs of himself. BAUER agreed to send these pictures to Special Agent Kurtz via text message but was unable to do so. He then agreed to let Special Agent Kurtz attempt to send the pictures from BAUER'S phone. Ultimately, Special Agent Kurtz was able to retrieve 11 pictures and 2 videos taken by BAUER on January 6, 2021, which depict various scenes from inside and outside the U.S. Capitol building.

One of the photographs from BAUER'S phone, clearly shows BAUER and HEMENWAY inside the Capitol building with a crowd behind them:



Special Agent Kurtz, confirmed that the man on the right side of the photograph is BAUER. Your Affiant identified the man on the left as HEMENWAY based on his driver's license photograph which bears a strong resemblance to the individual depicted in the photograph above on the left:



Your affiant was also able to identify him by the tattoo shown in the photograph near his thumb that appears to be a dice. HEMENWAY told the Agents that he has a tattoo of dice on his hand near his thumb. Both men are holding up their middle fingers in the photograph.

A six second video from BAUER'S phone also shows BAUER inside the Capitol:

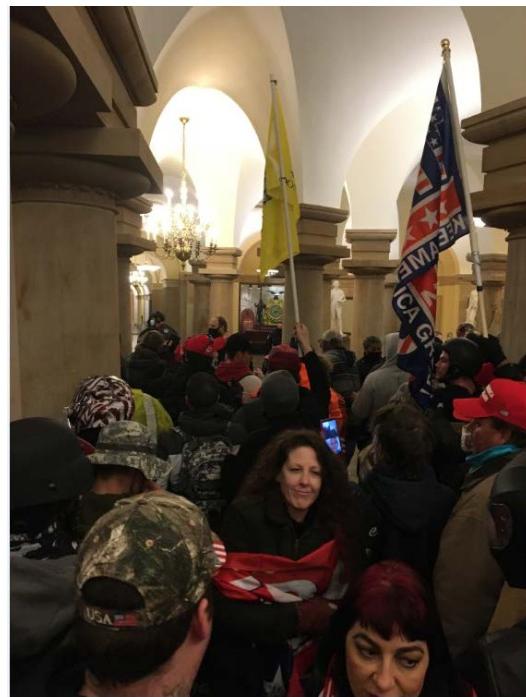


In the video, BAUER is chanting, "Our house! Our house!," with a large crowd behind him. Special Agent Kurtz also identified BAUER in the video. In both the video and the photograph depicted above, your Affiant recognized large pillars that appear to be the pillars in the Capitol crypt directly behind BAUER. Many of the individuals in the video are wearing red "Make America Great Again" hats and one man is carrying a "Make America Great Again" flag. The crowd appears to be the same crowd that entered the Capitol building on January 6, 2021, after the pro-Trump rally.

Additionally, your Affiant viewed other photographs and one other video from BAUER'S phone. The video also appears to be taken inside the Capitol crypt and pans across the crowd, who is wearing mostly red and camouflage Trump hats:



Another photograph from BAUER'S phone depicts the crowd inside the crypt:



Another photograph depicts the crowd in the hallway leading into the crypt:



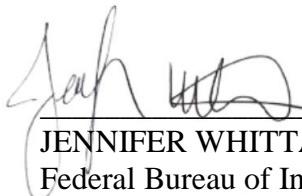
BAUER stated that his reason for entering the Capitol was to “occupy the space.” He had no intention of assaulting law enforcement or fighting anyone. He also denied knowing that Congress was in session at the time he entered the Capitol building. BAUER explained that people in the crowd were angry about pedophiles, the news cycle, and losing their businesses during the lockdown.

HEMENWAY explained that he entered the Capitol out of “curiosity” and “stupidity.” He said that he did not know Congress was in session on January 6, 2021, but he did know they were certifying the Electoral College vote. He also knew that Vice President Pence was going to announce the Electoral College vote. HEMENWAY said that he knows being inside the U.S. Capitol under those circumstances was wrong.

BAUER recalled exiting the U.S. Capitol at about 3:00 p.m. through a ground-level door on the East side of the building. He recalled walking out of the Capitol building and seeing the U.S. Supreme Court building. HEMENWAY recalled leaving the area at around 3:30 p.m. According to HEMENWAY, on his way out of the Capitol building, he saw a man trying to break windows. HEMENWAY told him to stop. BAUER said that he and his wife flew back to Kentucky on January 7, 2021, because they missed their 5:00 p.m. flight on January 6, 2021.

Based on the foregoing, your affiant submits that there is probable cause to believe that BAUER and HEMENWAY violated 18 U.S.C. § 1752(a)(1), which makes it a crime to knowingly enter or remain in any restricted building or grounds without lawful authority to do so; or attempts or conspires to do so. For purposes of Section 1752 of Title 18, a “restricted building” includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service, including the Vice President, is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance.

Your affiant submits there is also probable cause to believe that BAUER and HEMENWAY violated 40 U.S.C. § 5104(e)(2)(G), which makes it a crime to willfully and knowingly parade, demonstrate, or picket in any of the Capitol Buildings.



JENNIFER WHITTAKER
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 14th day of January 2021.

ZIA M. FARUQUI
U.S. MAGISTRATE JUDGE